



California Farm Bureau Federation

DEPARTMENT OF ENVIRONMENTAL ADVOCACY

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COMMENTS OF THE CALIFORNIA FARM BUREAU FEDERATION

STATE WATER RESOURCES CONTROL BOARD TRIENNIAL REVIEW WORKSHOP

July 13, 1994

The California Farm Bureau Federation ("Farm Bureau") submits the following comments in response to the State Water Resources Control Board's ("Board") Notice of Public Workshop for July 13.

Farmers and ranchers throughout California depend upon the waters of the Sacramento and San Joaquin Delta/San Francisco Bay ("Bay/Delta") to maintain their livelihood and to provide the food, fiber, nursery products, open space, wildlife habitat and tax base we all depend upon. Farm Bureau appreciates the opportunity to comment on behalf of its more than 75,000 members throughout the state. Farm Bureau is the largest agricultural organization in California, representing more than 42,000 farm and ranch families--more than 80% of the state's commercial agricultural producers. These farm and ranch families that we represent throughout the state use water from nearly all the watercourses in the Sacramento and San Joaquin valleys, including small and large private diversions, as well as the state and federal projects. Additionally, Farm Bureau represents farmers and nurserymen in Southern California and the high desert who depend upon water from Metropolitan Water District and the California Aqueduct.

Farm Bureau also represents more than 30,000 people who, although not directly involved in commercial agriculture, live and work in rural communities and are therefore very concerned about the continuing economic health of the agricultural industry as the backbone of their communities and way of life.

Although the Board will hear a large majority of comments from purveyors of water, it is important that this Board recognize that individuals, including farmers and ranchers, are the ultimate users of water and are the people that will be directly affected by water quality standards. Therefore, to the extent that the numerous purveyors will be able to provide

reliable and affordable water to individual farmers and ranchers, we urge the Board to seriously consider their comments.

As a starting point, Farm Bureau encourages the Board to develop a comprehensive package of measures to return control of the delta to the Board. It is our belief that this comprehensive package can be fashioned in a manner that is relatively painless for existing water users in the state, and yet maintains water quality in the delta necessary for fish and wildlife. This package must focus on the positive measures that can be undertaken today rather than being punitive in nature. The following is our framework vision of how this can occur. The premise for this framework is that agriculture is critical to California and that water rights in California must and will be protected by the Board. Once these principles are accepted by the Board, the reasonable level of protection required for fish and wildlife in the delta will naturally follow.

I. AGRICULTURE IS CRITICAL TO CALIFORNIA

The Legislature has found "that the preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources, and is necessary not only to the maintenance of the agricultural economy of the state, but also for the assurance of adequate, healthful and nutritious food for future residents of this state and nation." (Gov. Code §51220(a).) The Legislature has also found "that in a rapidly urbanizing society, agricultural lands have a definite public value as open space, and the preservation and agricultural production of such lands, the use of which may be limited under the provisions of this chapter, constitutes an important physical, social, esthetic and economic asset to existing or pending urban or metropolitan developments." (Id. at (c).) With respect to the delta, the Legislature has declared that it "is an agricultural region of great value to the state and nation and the retention and continued cultivation and production of fertile peatlands and prime soils are of significant value. [Moreover, the] agricultural land of the delta, while adding greatly to the economy of the state, also provides a significant value as open space and habitat for water fowl using the Pacific Flyway, as well as other wildlife, and the continued dedication and retention of that delta land in agricultural production contributes to the preservation and enhancement of open space and habitat values." (Pub. Res. Code §29703.) The Legislature has made it very clear that agriculture is critical to California and must be protected.

The productivity of agricultural lands, of course, depends upon a reliable and affordable water supply. Agriculture, however, will likely bear the burden of meeting any water quality proposals in the delta, whether they are proposed by the U.S. Environmental Protection Agency (USEPA) or the Board. Urban areas will appear to be affected by these proposals, but, as we all recognize, they will be able to secure water supplies with their financial resources and the propensity of people to meet urban water demands. Agriculture will therefore not only bear the burden of meeting the impacts specifically attributed to it,

but it will also continue to be forced to meet the increased urban demands that will result from any water quality proposals.

The Department of Water Resources' ("DWR") most recent water budget (Bulletin 116-93) predicts a large and increasing water deficit in the State of California. Our population is expected to be 36.5 million people in the year 2000 and 48.9 million by 2020. The projected deficit (or water shortfall) in the year 2020 is expected to be 1.3 million acre-feet to 3.3 million acre-feet during an average year and up to 8.0 million acre-feet in drought years, including overdraft. These figures to a degree share our optimism that increased water conservation, water recycling, conjunctive use and storage south of the delta will be accomplished and will be effective in reducing the water deficit. These figures do not account for further regulatory restrictions on water use in the delta and its tributaries which threaten viable agriculture.

Our greatest concern with water quality standards is that many family farm operations in California will likely be harmed. The Board must recognize that its standards may place burdensome requirements on many families and small rural farmers who, as a matter of general practice, depend upon traditional, efficient and cost-effective farm management practices, such as participation in cooperatives and sharing of equipment. To remain viable, these farmers depend upon affordable water, which in many instances is delivered by the water purveyors that were established by their ancestors. This type of community in farming and water is vital to agricultural success and remains one of the virtues of rural California life. Any effort to reallocate water will damage this social fabric of rural life and will lead to unfortunate results.

II. WATER RIGHTS MUST BE PROTECTED

Although the Board has announced a water rights proceeding beginning next year, the Board must nonetheless consider water rights in formulating water quality standards. Without full consideration of the water rights implications, a prudent water quality control plan cannot be drafted. We therefore remind the Board that it, as custodian of our water rights system, must honor well-established rights to water. This means that the Board must protect prior rights to the beneficial uses of water. As Judge Racanelli has stated: "[i]n exercising its permit power the Board's first concern is recognition and protection of prior rights to beneficial use of the water in the stream." (U.S. v. SWRCB (1986) 182 Cal.App.3d 82,103; emphasis added.)

As part of its duty to protect water rights, the Board is prohibited from making a futile call on water to implement the water quality control plan. This basically means that the Board cannot place a call upon delta waters if the water will not serve the purposes for which the call is made, which in the present case would presumably be the protection of fish and wildlife. Standards that require increased delta outflow and restrictions on diversions therefore cannot be required without evidence that the water will actually benefit fish and

wildlife. Put differently, all uses of water in California must be reasonable, including those dedicated to instream uses. The Board therefore cannot require outflow unless it can show that a given amount of additional flows will provide an actual, measurable, and necessary benefit to fish and wildlife in the delta.

Concomitant with its duty to protect water rights, we urge the Board to consider, and when appropriate, adopt or recommend the following mechanisms which will protect delta fish and wildlife within the water rights context. It is our belief that by adhering to these principles, the Board can protect water rights and adequately protect fish and wildlife in the delta.

A. Water Transfers

Any comprehensive delta solution must include the ability to transfer water. Most important to agriculture, geographically diverse transfers give the needed flexibility to California's water system and provide a mechanism which can work in conjunction with California's well established water laws and rights. The California Legislature has clearly stated our state's policy "to facilitate the voluntary transfer of water and water rights where consistent with the public welfare of the place of export and place of import." (Water Code §109.) The Central Valley Project Improvement Act also allows for water transfers of Central Valley Project water out of its service area. (CVPIA §3405(a).) DWR's water bank in 1990 and 1991 produced excellent examples of how transfers can add flexibility to our water system and also provide water for instream needs in the delta. There is presently a provision in the Water Code which allows for voluntary transfers to instream uses. (Water Code §1707.) Any proposal by the Board must accommodate opportunities to transfer water.

B. Efficient Water Management Practices

Efficient water management practices are an integral part of any conservation ethic in California. Agriculture is committed to water conservation, and can stand on a solid record of success. Agriculture has not increased its share of California's waters in 20 years, but it has increased agricultural production during this period by 50%. This is real conservation.

Farm Bureau believes in the development of water conservation practices by individual landowners and by water suppliers to the extent feasible and physically possible. As evidence of our commitment, we have recently provided detailed information to farmers and ranchers throughout the state on the legal procedures to conserve water and protect their rights to water. It is our hope that this encouragement, coupled with the actions of water suppliers, will result in a net-positive effect on water supply in California, which in turn will benefit water quality and the environment.

In addition to individual on-farm practices, we endorse the State Water Conservation Coalition's "Policy Statement on Efficient Water Management Practices for Conservation by

Agricultural Water Suppliers" which was previously presented to the Board on June 15, 1994. Farm Bureau was an active participant in this process. This program will undoubtedly improve the way water is used as it is moved to, and as it is used on, the farm.

C. Physical Solutions

Although the term physical solution has been used differently in many contexts, it basically means an approach to promote the optimum utilization of the water source while protecting established rights to water. This principle has been long recognized in California water law and it has broad implications for the delta. The following discusses three examples of physical solutions which the Board can either implement or recommend to the appropriate agencies, but in any event, make possible by drafting water quality standards to facilitate such a solution.

First, a facility is particularly needed to efficiently move water through the delta. As a concept, this facility could unequivocally benefit the delta. This facility would presumably isolate the pumps in the southern part of the delta, thereby minimizing the impacts on delta fish and wildlife, while allowing the efficient use of water by the projects. This type of facility is also necessary to allow efficient water transfers through the delta.

We support the Bay/Delta Oversight Council (BDOC) planning process and recommend that the Board continue to cooperate with BDOC to assure the construction of sound facilities that will actually benefit the delta's aquatic species while preserving the other uses of delta waters. The Board's water quality standards should set the stage for these facilities.

Second, the screening of select diversions in the Sacramento River and delta are an important physical solution to protect fish and preserve water rights. Farm Bureau previously submitted comments to the National Marine Fisheries Service (NMFS) regarding its "Proposed Rulemaking Concerning Screening Requirements for Water Diversions from the Sacramento River and Delta to Protect Winter Run Chinook Salmon." (See Appendix A.) To summarize our comments, we generally support the use of fish screens as a tool to comprehensively manage the delta and to maintain the Sacramento River fisheries. It is our hope that a single program, involving both federal and state agencies, will encourage certain diverters to undertake screening in a manner that will maximize the protection of the salmon and other fish with minimum investment and impact. Since the protection of salmon and other fisheries is in the public interest, the public interest must generate the funding for the physical improvements necessary to protect these fish. Funding by federal and state agencies will undoubtedly dictate the success of any screening program.

Finally, a physical solution may require entities to divert water at a point as far downstream as possible so as to benefit water quality. For example, if the Bay Area purveyors were to change their point of diversion to the delta, and this would significantly increase flows in the San Joaquin River and the delta, the Board should require this change

as part of a physical solution. Importantly, this change in point of diversion would not affect any underlying water rights.

D. Area of Origin Protections

Areas in which water originates must not be deprived of any quantity and quality of water needed to satisfy their beneficial requirements. The numerous area of origin laws were designed for this purpose. Without these protections, it is likely that the state and federal projects would not have been built. The protection accorded areas of origin allow for the export of the water by the projects, but only that water which is surplus to the beneficial needs of the area of origin. The Board must honor these protections and they must be reflected in any water quality standards. If the Board disregards these protections, then the state would be reneging on its promises and any confidence in the protection of water by the state would be shattered.

E. Groundwater Management

Although groundwater is not directly at issue in this proceeding and is outside of the Board's jurisdiction, it is nonetheless important to consider the effects that the Board's water quality standards will have on groundwater. As the Board is well aware, when surface water is not available due to regulatory constraints, many users turn to groundwater to meet their needs. A conjunctive use program when utilized properly is a sound and important mechanism to fully utilize and efficiently manage our state's water resources. But when groundwater is pumped as a long-term substitute for surface supplies the effects on groundwater aquifers and the environment have been and will continue to be detrimental.

Farm Bureau supports local groundwater management under the Groundwater Management Act (AB 3030) and other special acts as a pragmatic approach to this problem. Much like conservation, we have actively encouraged farmers and ranchers to urge their districts and other local entities to manage groundwater. We have also supported conjunctive use programs as a means to manage water in a flexible and utilitarian manner. We therefore request that the Board consider the potential impacts to our state's groundwater resources and the impending need for surface waters to assure flexibility in jointly managing ground and surface waters.

F. Water Supply Planning

The Board must begin to take a hard look at new uses of water in California. The rate of development in California is challenging the ability of the infrastructure to keep pace, including the state's water supply. This has been confirmed by the Department of Water Resources in Bulletin 160-93.

All too often developments are approved, or use permits granted, without due consideration given to the amount of water available, its quality and the physical delivery

system needed. This lack of foresight has generally been at the expense of agricultural water users. Government planners often find it easier to shift existing water supplies rather than face the daunting task of developing new sources of water. Therefore, from an agricultural perspective, it seems clear that prudent planning and growth management dictate that new municipal and industrial projects have an identified source to meet their water needs. This minimizes the jeopardy to current water users, whether they are urban or rural.

Farm Bureau has actively supported AB 2673 (Cortese) in the Legislature and we will continue to work to strengthen the relationship between local land use planning and water supply. Several years ago the Board essentially began this process by declaring certain streams "fully appropriated." This, however, has only shifted water as previously discussed. The Board now must continue down this road by requiring that all new uses are reasonable under Article X, Section 2 of the California Constitution, and Water Code §§100 and 275. The reliance on a temporary or mere paper right to water for development purposes is an unreasonable use of water. The Board should also recommend to the Legislature, the Governor, and local agencies that water supply must be fully analyzed in the land use process to assure orderly development and the protection of water rights. Any other policy of allowing development to proceed without a proven and adequate water supply is very short-sighted and will significantly impact existing water users throughout California, including farmers and ranchers.

III. LEVEL OF PROTECTION MUST BE REASONABLE

The Board's water quality standards must include levels of protection to provide for the reasonable uses of water. We recommend that the Board begin its process by striving to protect water rights. The previous water rights framework, if implemented and consistent with water quality standards, will play a significant role in the protection of fish and wildlife. Additionally, we recommend the Board consider the following in formulating its standards:

A. Board Must Proceed Under State Law

Although EPA's proposals have brought the Clean Water Act into focus, the Board must recognize that it is acting only under state law and therefore must only meet the requirements of state law. In other words, the Clean Water Act does not govern the Board's decisions. Porter-Cologne "declares that the people of the state have a primary interest in the conservation, control and utilization of the water resources of the state, and that the quality of all the waters of the state shall be protected for use and enjoyment by the people of the state." (Water Code §13000.) Agricultural and other uses must be protected in accordance with state law.

B. Minimize Outflows in the Delta

It should be obvious to the Board that simply throwing water at fish and wildlife, as USEPA and others have suggested, is not a solution to the delta. Increased outflows mean less water for people and the loss of the productive environment which agriculture provides in open space and wildlife habitat. Additionally, freshwater flowing unused into the ocean is contrary to our state's constitutional policy to conserve and fully utilize water.

To put outflow in perspective, for the years 1980-91 the average inflow into the delta was 25.4 maf. Yet only 6.7 maf of this water was diverted from the delta, including 2.4 maf for the State Water Project, 2.6 maf for the Central Valley Project, and 1.7 maf for delta uses. This means that on average 19.7 maf flows out to the ocean. Outflow, or water for fish and wildlife purposes, is therefore nearly 80% of the total flow in the delta. These numbers suggest a system that already favors the protection of fish and wildlife. Solutions to the delta should therefore focus upon comprehensive management rather than increased outflow.

If the Board decides to proceed with flow requirements at this stage of the process, we recommend that they be described separately from the water quality standards which are subject to EPA's scrutiny under §303 of the Clean Water Act.

C. Striped Bass Criteria Should be Deferred

It is well documented that large striped bass prey on native salmon smolts. In light of this, many biologists have recommended that specific protection for the exotic striped bass be deferred until salmon populations have increased in the delta. The impacts of a striped bass standard, such as that suggested by USEPA, are significant. Releases of San Joaquin River flows in April and May to satisfy the standard would significantly reduce the water available for stream flow at other times. A standard for this introduced species therefore is counterproductive, does not make any sense, and should be avoided until salmon populations have stabilized.

D. Anti-degradation

California's waters should not be degraded for future uses. This is consistent with the policy of the Board to maintain high quality waters. Yet a conscious decision was made by our society to take water out of the delta system for important agricultural, domestic and industrial uses. Quite simply, we cannot go back to a simpler and less populous time. For example, we cannot undo the problems in the delta and rivers created by mine abandonment and hydraulic mining. We must all also recognize that there are more than 150 introduced aquatic species of plants and animals in the delta, including more than 27 different non-native fish species, and there will undoubtedly be additional species introduced over time. Industrial and municipal discharges also contribute to pollution levels and directly affect fish

and wildlife. Possibly the most significant impact on delta fish and wildlife has been fishing, both legal and illegal. These activities have all seriously degraded the delta's waters.

This is particularly important considering the substantial impacts that water quality standards could have on beneficial uses of water and on the ensuing economy of the state of California. The state policy on anti-degradation allows some degradation to occur if consistent with the maximum benefits of the people of the state. (Water Code §13140 through 13147; SWRCB Resolution 68-16.) We submit to the Board that California is now a very different place, and after taking a hard look at the economic and other impacts of this proposed set of standards, it should recognize that a certain amount of degradation will and must occur to benefit the people of California.

Thank you for the opportunity to submit our framework vision to protect water rights in California while maintaining fish and wildlife in the delta.

Respectfully submitted,

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VIA FACSIMILE AND MAIL (301) 713-2258

Gary Matlock
Acting Regional Director
National Marine Fisheries Service
Southwest Region
501 West Ocean Blvd., Ste. 4200
Long Beach, CA 90802-4213

Re: Proposed Rulemaking Concerning Screening Requirements for Water
Diversions From the Sacramento River and Delta to Protect Winter-run
Chinook Salmon

Dear Mr. Matlock:

The California Farm Bureau Federation ("Farm Bureau") appreciates the opportunity to comment on the National Marine Fishery Service's ("NMFS") proposed rulemaking for the above matter. These comments are submitted pursuant to the notices in the Federal Register on October 18, 1993 (58 Fed. Reg. 53703) and January 20, 1994 (59 Fed. Reg. 3068).

Farm Bureau is the largest agricultural organization in California, representing more than 42,000 farm and ranch families--more than 80% of the state's commercial agricultural producers. Farm Bureau also represents more than 30,000 people who, although not directly involved in commercial agriculture, live and work in rural communities and are therefore very concerned about the continuing economic health of the agricultural industry as the backbone of their communities and way of life. Many of our members have built their livelihoods and their families upon the waters of the Sacramento River and the Delta. These farmers and ranchers either divert directly from the river system or receive water from districts, agencies or companies that divert from the river. Farm Bureau urges NMFS to seriously consider the comments of these individual diverters in addition to our comments.

As a general concept, Farm Bureau supports the use of fish screens as a tool to maintain the Sacramento River fisheries. There are, however, legal, biological, and economic constraints on NMFS' ability to require screens on all diversions. It is our hope that NMFS, rather than mandating screens, will encourage certain diverters to undertake

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screening in a manner that will maximize the protection of the salmon and other fish with minimum investment and impact. Our comments will focus upon the Sacramento River and Delta, but also point to the state-wide implications of this issue.

I. LEGAL CONSTRAINTS

A. NMFS Must Comply With NEPA

The National Environmental Policy Act (NEPA) was enacted to assure that federal agencies make informed, environmentally sound decisions when considering the significant impact that their actions may have on the environment. (42 U.S.C. §4321 *et seq.*) NEPA declares that it is "the responsibility of the Federal Government to use all practicable means... to...attain the widest range of beneficial uses of the environment without degradation, risk of health or safety, or other undesirable or unintended consequences." (*Id.* at §4331(b)(3).) In an effort to achieve this goal, NEPA requires that an environmental impact statement (EIS) must be prepared by a federal agency when it proposes to engage in a "major federal action" which may "significantly" affect the quality of the human environment." (*Id.* at §4332(2)(C); 40 C.F.R. §1500 *et seq.*) Considering that a rule requiring screens would be within the purview of these provisions, the NMFS must prepare an EIS.

B. NMFS Must Comply With the APA

Any regulation promulgated by NMFS under its Endangered Species Act authority must comply with the formal rulemaking procedure in the Administrative Procedures Act (APA), (5 U.S.C. §706.) This means that any screening rules must be supported by substantial evidence. (See e.g., Citizens to Preserve Overton Park v. Volpe 401 U.S. 402,414 (1971); American Tunaboat Association v. Baldrige 738 F.2d 1013,1015 (9th Cir. 1984).) In the Federal Register, NMFS indicates that "unscreened diversions may be causing significant losses of juvenile winter-run chinook salmon since juveniles rear in the Sacramento River during a significant portion of the normal irrigation season." (58 Fed. Reg. 53703; emphasis added.) NMFS also indicated, "[h]owever, the magnitude of these diversions, and the extent to which these diversions cause significant losses of juvenile chinook salmon has not been adequately studied." (*Id.*) It therefore appears that NMFS does not have substantial evidence at this time to support an absolute regulation on screening diversions.

C. NMFS Must Conduct a Takings Implication Assessment

In an effort to protect private property rights and to minimize government intervention that affects these rights, Executive Order 12,630 provides:

"Responsible fiscal management and fundamental principles of good government require the government decision-makers to evaluate carefully the effect of their administrative, regulatory, and legislative actions on constitutionally protected property rights.

(5 U.S.C. §601; Executive Order 12,630, §1(b).) Accordingly, this executive order requires federal agencies to perform a takings implication assessment (TIA)

"To assess the takings implication of proposed policies and actions on private property interest protected by the Fifth Amendment. In this way, federal agency decision makers will be better informed about the potential affects of proposed agency activities.

(U.S. Department of Justice, Attorney General's Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings at 2.) Therefore, NMFS must perform a TIA prior to adopting rules that will require screens because such action may divest private citizens of their water rights and other property rights.

D. NMFS Cannot Impair Water Rights

The NMFS must respect the well-established water rights of diverters and the users of the water. Remember that the cases cited by NMFS in the Federal Register held that pumping violated the ESA, not the actual use of the water. (58 Fed. Reg. 53704; See U.S. v. Glenn-Colusa (1992) Eastern District of California, Civil 5-91-1074.). Any regulation proposed by NMFS must not impair water rights.

II. POLICY ISSUES

A. Funding of Screens Is in The Public Interest

Funding is at the heart of any screening program and will undoubtedly dictate its success. It has been estimated that the costs of screening may be in excess of \$10,000 per cubic feet per second of water (cfs). This simply cannot be borne by the agricultural economies of the Sacramento Valley and Delta.

Congress and the California Legislature have made it clear that the protection of salmon and other fisheries is in the public interest. (16 U.S.C. §1531(a)(3) and (5); P.L. 102-575, §3401; Water Code §1243.) The public interest must therefore generate the funding for the physical improvements necessary to protect these fish. NMFS and the affected parties must actively seek to secure funding in conjunction with other federal agencies, including the use of the CVPIA §3407 Restoration Fund.

B. Screening Needs to be Prioritized

To assure the efficient use of any funding, a screening priority list must be established. Put differently, NMFS must implement any program in a way that gives the most bang for the buck. This approach requires NMFS to step back and look at the entire river system rather than micro-managing each individual diversion. This will place emphasis on those diversions which actually harm the salmon. This approach is consistent with the goals of the ESA and the CVPIA to protect as many fish as possible, and would be the most effective means to accomplish these goals.

C. Alternative Strategies Must Be Considered

Farm Bureau firmly believes that comprehensive management is the real solution to the problems of the Sacramento River and the Delta. Many of the new technologies that have been advanced for use in the Sacramento River and Delta are an important part of this comprehensive solution. Certain alternatives to screens, such as acoustic and light barriers, will serve the goal of keeping fish out of diversions. NMFS needs to be receptive and open-minded to any alternatives to screens.

NMFS must also address all causes of salmon decline, not just the perceived problems with agricultural diversions. For example, fishing is one of the biggest culprits of reduced salmon populations. Additionally, the influence of non-native species, industrial discharges, and dredging of the Bay all have contributed significantly to this decline. The NMFS cannot continue to ignore these factors which require a comprehensive solution.

D. Operation and Maintenance

The construction and placement of a screen at a diversion is a major step, but it is only the beginning, not the end. Any NMFS program must assure that the screens will be operated and maintained to continue their effectiveness. This of course will require additional funding and commitment by NMFS.

E. NMFS Needs to Allow Incidental Take

Farm Bureau is very disappointed that NMFS will change the status of the winter-run chinook salmon from threatened to endangered. Although the scope of the "4(d) rule"¹ is not clear, it is obvious that NMFS, in changing the designation, will lose a certain degree of flexibility with respect to its management of the Sacramento River and Delta. By allowing

¹ 16 U.S.C. §1533(d).

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incidental take at diversions, NMFS will nonetheless be able to provide as much flexibility for diverters and water users as possible.

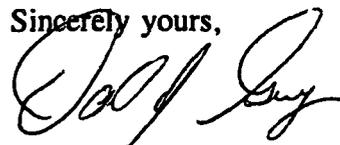
III. POSSIBLE SOLUTION

As the previous discussion indicates, there are some serious constraints upon the NMFS to promulgate an absolute regulation for screening as it has suggested. Farm Bureau nonetheless believes that the screening of diversions, if done properly, will be part of a comprehensive solution to the problems of the Sacramento River and Delta. To this extent, we support a program by NMFS that will encourage, rather than mandate, the use of screening devices to help protect the fisheries in the Sacramento River and Delta.

Agricultural water users in the Sacramento Valley and Delta have proposed a "negotiated rulemaking" process that may lead to this type of solution. This process will allow farmers, ranchers, districts, and other affected parties the opportunity to jointly negotiate a proposed rule. Presumably a program would be formulated that is flexible for diverters and water users, and yet gives NMFS and other agencies some assurances that salmon will be protected. In other words, this process can be mutually advantageous to all interested parties and agencies. Farm Bureau urges NMFS to strongly consider using negotiated rulemaking for the screening of diversions.

Farm Bureau looks forward to participating in this process. Thank you for the opportunity to submit these comments.

Sincerely yours,



DAVID J. GUY

DJG/gt

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cc: County Farm Bureaus